APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BOB BAFFERT,
Plaintiff-Appellee,

v.

CALIFORNIA HORSE RACING BOARD; ROY C. WOOD, JR., in his capacity as Executive Director of the California Horse Racing Board; and JOHN C. HARRIS, SHERYL L. GRANZELLA, MARIE G. MORETTI, ALAN W. LANDSBURG; WILLIAM A. BIANCO, and ROGER H. LICHT, in their official capacities as members of the California Horse Racing Board,
Defendants-Appellants,

and

ROBERT H. TOURTELOT, in his official capacity as a member of the California Horse Racing Board,
Defendant.

Nos. 02-55858
02-56135
D.C. No.
CV-01-07363-DT
OPINION

Appeals from the United States District Court
for the Central District of California
Dickran M. Tevrizian, District Judge, Presiding

Argued and Submitted
April 10, 2003—Pasadena, California

Filed June 6, 2003

BEST AVAILABLE COPY

Before: Mary M. Schroeder, Chief Judge, Susan P. Graber, Circuit Judge, and James K. Singleton,* District Judge.

Opinion by Judge Graber

*The Honorable James K. Singleton, United States District Judge for the District of Alaska, sitting by designation.

COUNSEL

Jerald L. Mosley, Deputy Attorney General, Los Angeles, California, for the defendants-appellants.

Neil Papiano, Iverson, Yoakum, Papaino & Hatch, Los Angeles, California, for the plaintiff-appellee.

OPINION

GRABER, Circuit Judge:

An administrative proceeding conducted under the authority of the California Horse Racing Board ("the Board")

resulted in an order suspending, for 60 days, Plaintiff Bob Baffert's license to race horses in California. While his appeal from the suspension order was pending, Plaintiff filed this action under 42 U.S.C. § 1983, seeking to enjoin the state proceedings on the ground that the Board had failed to preserve evidence to which Plaintiff was constitutionally entitled. The Board argued that the principles of *Younger* abstention[1] required the district court to decline jurisdiction. The district court nevertheless decided the case. Because we agree with the Board that *Younger* abstention applies, we reverse and remand with instructions to dismiss.

FACTUAL AND PROCEDURAL HISTORY

Plaintiff trains thoroughbred racehorses. Defendants are the Board,[2] which is the administrative body charged with overseeing horse racing in California, and its individual members.

On May 3, 2000, "Nautical Look," a horse trained by Plaintiff, won the seventh race at the Hollywood Park racetrack. As California's regulations require, the track veterinarian took blood and urine samples from the horse. One half of each sample, the "official sample," was sent to a laboratory for testing. The Board retained the other half of each sample, known as the "split samples," which are kept for the purpose of confirming a positive drug test on the official samples. Both the official sample and the split sample of Nautical Look's urine tested positive for trace amounts of morphine.

Several months later, a panel of three Stewards, appointed by the Board, held a formal hearing to consider a complaint against Plaintiff arising from the drug testing of Nautical

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[1] *Younger v. Harris*, 401 U.S. 37 (1971).

[2] Because we hold that the district court erred in exercising jurisdiction over this entire action, we do not address the Board's contentions that it is immune under the Eleventh Amendment and is not a proper defendant for purposes of § 1983.

Look. Plaintiff argued that the presence of such a small trace of morphine in the horse's urine likely was explained by environmental contamination. Environmental contamination is a defense under California regulations, but that defense may be rebutted by evidence that the trainer did not reasonably ensure the horse's protection from such contamination. Extensive evidence was taken on these issues.

At the hearing, Plaintiff learned that the Board had tested only the urine samples. The blood samples had been destroyed. The official blood sample was destroyed pursuant to an August 1999 policy of destroying one-third of all the blood samples submitted to the laboratory. When no request for testing of the split blood sample was made within the 45-day period after the race during which the split sample remained in the Board's custody, that sample was "purged" due to its age.

Following the hearing, the Stewards concluded that Plaintiff "did not meet the standards of mitigating circumstances as set forth in Rule 1888(c) (Defense to Trainer Insurer Rule)" and, thus, that he had violated "California Horse Racing Board rules # 1843(a) (Medication, Drugs and Other Substances — Morphine — Class I) and # 1887 (Trainer to Insure Condition of Horse)." The Stewards ordered that Plaintiff's license be suspended for 60 days. Plaintiff timely appealed that decision to the Board. He also obtained a stay of the suspension pending resolution of the appeal.

While the state administrative appeal was pending, however, Plaintiff filed this federal action under 42 U.S.C. § 1983 against the Board and its members in their official capacities. The federal complaint alleges that Defendants violated Plaintiff's due process rights by failing to preserve the blood samples taken from Nautical Look on May 3, 2000. Defendants argued that *Younger* abstention required dismissal. The district court disagreed. The court granted a preliminary injunc-

tion and then, on summary judgment, a permanent injunction in favor of Plaintiff, and awarded attorney fees to Plaintiff.

The Board now brings this timely appeal. We reverse and remand with instructions to vacate the award of fees and to dismiss the action.

STANDARD OF REVIEW

We review de novo whether *Younger* abstention applies. *Green v. City of Tucson*, 255 F.3d 1086, 1093 (9th Cir.) (en banc), *cert. dismissed*, 533 U.S. 966 (2001).

We also review de novo whether a party is statutorily entitled to attorney fees. *Gilbrook v. City of Westminster*, 177 F.3d 839, 875 (9th Cir. 1999).

DISCUSSION

A. *Abstention*

Younger abstention is a "circumscribed exception to mandatory federal jurisdiction," which applies when there is a pending state proceeding that implicates important state interests and provides the federal plaintiff with an opportunity to raise federal claims. *Green*, 255 F.3d at 1099. If the circumstances giving rise to *Younger* abstention apply, the district court must dismiss the action. *Id.* at 1093.

[1] As a threshold matter, for *Younger* abstention to apply, the federal relief sought must interfere in some manner with the state litigation. *Id.* at 1094. Next, in determining whether abstention is proper, the court must examine:

> (1) The nature of the state proceedings in order to determine whether the proceedings implicate important state interests, (2) the timing of the request for federal relief in order to determine whether there are

> ongoing state proceedings, and (3) the ability of the federal plaintiff to litigate its federal constitutional claims in state proceedings.

Kenneally v. Lungren, 967 F.2d 329, 331 (9th Cir. 1992) (internal quotation marks omitted). Finally, an exception to abstention applies if the state proceedings demonstrate "bad faith, harassment, or some other extraordinary circumstances that would make abstention inappropriate." *Id.* at 332 (internal quotation marks omitted).

Here, Plaintiff seeks to enjoin state administrative proceedings, so there is "no doubt" that the federal injunctive relief would interfere directly with those proceedings. *Green*, 255 F.3d at 1095-96. The parties agree that state proceedings were ongoing. We turn, then, to the remaining considerations.

1. *The state proceedings implicate important state interests.*

Younger abstention applies to actions seeking to enjoin pending state administrative proceedings (as well as state court proceedings) if an important state interest is involved. *Ohio Civil Rights Comm'n v. Dayton Christian Schs., Inc.*, 477 U.S. 619, 627 (1986); *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 433-34 (1982). The importance of the interest is measured by considering its significance broadly, rather than by focusing on the state's interest in the resolution of an individual case. *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 365 (1989) ("*NOPSI*").

[2] California's interest in protecting the integrity of horse racing is expressed in legislation, which is intended to

> allow parimutuel wagering on horse races, while:
>
> (a) Assuring protection of the public.

> (b) Encouraging agriculture and the breeding of horses in this state.
>
> (c) Supporting the network of California fairs.
>
> (d) Providing for maximum expansion of horse racing opportunities in the public interest.
>
> (e) Providing uniformity of regulation for each type of horse racing.

Cal. Bus. & Prof. Code § 19401 (West 2003). Further, the legislature specifically requires the Board to adopt "equine medication" regulations in order to "preserve and enhance the integrity of horse racing in the state." *Id.* § 19580. Preserving the integrity of racing is a significant interest, especially in view of the fact that California permits wagering on horse racing. *See id.* § 19594; *see also id.* § 19461, notes (signing message from Gov. Gray Davis identifying thoroughbred horse racing as "one of California's premier sporting industries").

Whether the state proceedings are "judicial in nature" or "quasi-criminal" also plays a role in assessing the significance of the state interest. *See Ohio Civil Rights Comm'n*, 477 U.S. at 627-28 & n.2 (addressing significance of requirement that the proceedings be "judicial in nature"); *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 13 (1987) (quoting *Juidice v. Vail*, 430 U.S. 327, 335 (1977), discussing application of *Younger* to "quasi-criminal" proceedings); *see also Huffman v. Pursue, Ltd.*, 420 U.S. 592, 604 (1975) (holding that *Younger* abstention extends to a state civil proceeding "which in important respects is more akin to a criminal prosecution than are most civil cases").

[3] Here, the Board held an adjudicatory hearing, which is quasi-judicial. Both sides were represented by counsel.

Because a license was at issue and could be suspended or revoked, the state proceedings also were "quasi-criminal." The state's interest in administering such proceedings without interference is thus significant. *Id.* Indeed, Plaintiff does not argue that the state's interest in licensing procedures concerning horse racing are less important, or less "judicial," than licensing procedures concerning lawyers or doctors. *See Middlesex*, 457 U.S. at 437 (applying abstention doctrine in view of pending administrative proceedings to revoke a lawyer's license); *Kenneally*, 967 F.2d at 330-31 (applying abstention doctrine in view of pending administrative proceedings to revoke a physician's license).

2. *The state proceedings provide an adequate opportunity to litigate Plaintiff's constitutional claim.*

Plaintiff primarily argues that the state proceedings do not provide an adequate opportunity to litigate his federal claims. Distilling his arguments to their essentials, he contends that (a) immediate federal review is necessary because the constitutionality of the proceedings themselves is at issue, so applying abstention would disregard the remedial purposes of § 1983; and (b) the multi-layered review of administrative decisions in the state forum will take too long. Established law forecloses those arguments.

(a) *Younger* abstention applies even if the constitutionality of the pending proceedings is at the heart of Plaintiff's claim.

The Supreme Court has "repeatedly rejected the argument that a constitutional attack on state procedures themselves automatically vitiates the adequacy of those procedures for purposes of the *Younger-Huffman* line of cases." *Ohio Civil Rights Comm'n*, 477 U.S. at 628 (internal quotation marks omitted). "[T]he mere assertion of a substantial constitutional challenge to state action will not alone compel the exercise of federal jurisdiction." *NOPSI*, 491 U.S. at 365. *Younger* itself

involved a First Amendment challenge to an ongoing criminal prosecution, but even that was insufficient to require the federal court to ignore principles of federalism and interfere with the state's proceedings. *Younger*, 401 U.S. at 43-45.

Nonetheless, Plaintiff literally claims that "[t]he only competent figure to rule on Constitutional issues . . . is a Federal Judge." Although we appreciate the vote of confidence, *Younger* and its progeny repeatedly and explicitly hold to the contrary. *See Middlesex*, 457 U.S. at 431 ("Minimal respect for the state processes, of course, precludes any *presumption* that the state courts will not safeguard federal constitutional rights."). Saddled with these precedents, Plaintiff's arguments cannot succeed. The substance of Plaintiff's claim does not justify federal interference.

(b) *California's administrative process provides sufficient judicial review so as to constitute an adequate forum to litigate federal constitutional issues.*

Plaintiff next claims that California's procedures for judicial review of an administrative decision are "layered and redundant" and will not provide a "timely" resolution to his federal claims. Thus, he contends, the proceedings are "inadequate." "[T]he burden on this point rests on the federal plaintiff to show that state procedural law barred presentation of [his] claims." *Pennzoil Co.*, 481 U.S. at 14 (internal quotation marks omitted). We must assume that state procedures afford an adequate remedy, in the absence of unambiguous authority to the contrary. *Id.* at 15. Plaintiff's allegations of redundancy and delay do not rise to the level of a procedural bar in this case.

Notably, the proceedings affording judicial review of the Board's decision are not peculiar to that administrative body. To the contrary, Plaintiff's challenge amounts to an attack on California's administrative review procedures as a whole. *See* Cal. Gov't Code § 11517 (West 2003) (providing for appeals

from administrative adjudications); Cal. Civ. Proc. Code § 1094.5 (West 2003) (providing procedures for writ of mandate for judicial review of administrative orders).

In *Kenneally*, we held that California offers an adequate opportunity for judicial review of administrative orders and that *Younger* abstention therefore applied to a physician's civil rights action challenging the revocation of his license. 967 F.2d at 332-33. *Kenneally* presented an even stronger case than Plaintiff's for concluding that the state procedures were inadequate, because it involved a challenge to the constitutionality of a particular regulation, which California's constitution explicitly precludes administrative bodies from adjudicating. *Id.* at 332. Despite Kenneally's inability to obtain redress at the administrative level, we applied *Ohio Civil Rights Commission* and held that the procedure for a writ of mandate offered an adequate opportunity for judicial review of the constitutional claims. *Id.* at 332-33.

[4] By contrast, Plaintiff's federal claims do not attack a regulation or statute as unconstitutional. Rather, he attacks specific evidentiary practices in his case that he asserts amounted to a violation of his due process rights. Plaintiff's claims thus concern the administrative agency's "competence to examine evidence before them in light of constitutional standards." *Dash, Inc. v. Alcoholic Beverage Control Appeals Bd.*, 683 F.2d 1229, 1234 (9th Cir. 1982) (internal quotation marks omitted). Although California's constitutional provisions explicitly preclude challenges to the constitutionality of a regulation in administrative proceedings, those provisions do not affect the competence of an administrative judge to examine evidence in the light of constitutional standards. *Id.*; *Kenneally*, 967 F.2d at 332. Unlike the plaintiff in *Kenneally*, Plaintiff can bring, and has brought, his claims of constitutional error to the attention of the administrative body on appeal. If the Stewards' decision is upheld, Plaintiff will have another chance to bring those claims to the superior court in a writ of mandate. The superior court's decision, if unfavor-

able, may then be appealed all the way through the California court system. Cal. Civ. Proc. Code § 1094.5. If Plaintiff remains dissatisfied with the state courts' treatment of his federal claims, he may seek certiorari in the United States Supreme Court. *See generally Murdock v. City of Memphis*, 87 U.S. (20 Wall.) 590 (1874) (discussing Supreme Court's scope of review of questions decided by the highest state courts).

[5] Plaintiff contends that this procedure will take too long. A bald assertion that state proceedings are lengthy does not eliminate the grounds for *Younger* abstention. As the Supreme Court has made clear, only when the timeliness issue amounts to a procedural bar do we decline to abstain due to the inadequacy of the forum. *Pennzoil Co.*, 481 U.S. at 15. Although there are instances in which timeliness plays a role in the adequacy of a state forum, Plaintiff's case is not one of them.

In *Meredith v. Oregon*, 321 F.3d 807, 818 (9th Cir. 2003), for example, we decided that the "unique posture of [the] case" rendered the state forum inadequate on timeliness grounds. (Internal quotation marks omitted.) The plaintiff in *Meredith* established that the peculiar facts of his case interacted with the unavailability of a stay of the state court judgment in such a way that the state courts would *never* have an opportunity to address his federal claims in a meaningful way. *Id.* at 818-19. Because the plaintiff's federal claim involved new evidence that the state forum was barred from reviewing, and the applicable stay procedures would have required the plaintiff to suffer all the consequences of the state's administrative decision before any review of his federal claims had taken place, we concluded that Oregon's administrative procedures in that particular case operated as a complete procedural bar to review of his federal claims. *Id.*

By contrast, here, Plaintiff can litigate his claims fully in the state forum. He has not shown that he will be forced to serve his suspension before he has had a chance to adjudicate

his federal claims in the state forum. To the contrary, until the district court entered an injunction below, the state court had stayed Plaintiff's suspension pending his appeal. Plaintiff has yet to serve the 60-day suspension, and there is no reason to think that he will be forced to do so before his appeal is heard in the state forum.

[6] Plaintiff obviously disagrees vigorously with the result that he has achieved thus far in California. However, his lack of success does not render the forum inadequate. Because Plaintiff's case fits cleanly within the criteria for abstaining under *Younger*, the district court was obligated to decline juris-diction unless some exception applied.

3. *No exception applies.*

[7] If state proceedings are conducted in bad faith or to harass the litigant, or other extraordinary circumstances exist, the district court may exercise jurisdiction even when the criteria for *Younger* abstention are met. *See Gibson v. Berry-hill*, 411 U.S. 564, 578-79 (1973) (holding that *Younger* abstention did not apply to a suit to enjoin a proceeding before an administrative board that had a pecuniary interest in the outcome); *Partington v. Gedan*, 961 F.2d 852, 861 (9th Cir. 1992) (referring to the "'bad faith and harassment' exception" to *Younger* abstention).

(a) *No bad faith is present.*

[8] The district court declined to abstain because it con-cluded that the Board's prosecution was in bad faith. In the *Younger* abstention context, bad faith "generally means that a prosecution has been brought without a reasonable expecta-tion of obtaining a valid conviction." *Kugler v. Helfant*, 421 U.S. 117, 126 n.6 (1975). Plaintiff cannot meet that standard.

[9] The Board had a reasonable expectation of obtaining a valid "conviction." In California, the trainer "is the absolute

insurer of and responsible for the condition of the horses entered in a race, regardless of the acts of third parties." Cal. Code Reg. tit. 4, § 1887(a) (West 2003). If a sample of bodily fluid taken from a horse tests positive, that test is prima facie evidence that the trainer has been negligent in the care of the horse and is prima facie evidence that the drug found has been administered to the horse. *Id.* § 1843(d). Nautical Look's urine sample tested positive for morphine, a Class I prohibited drug. Plaintiff was Nautical Look's trainer. On those facts alone, under the regulations the Board had a "reasonable expectation" of obtaining a valid "conviction."

[10] Nor does the fact that the Board destroyed Nautical Look's blood samples prove bad faith. Nautical Look's blood samples were not singled out for destruction. The samples were destroyed (a) pursuant to a random practice of destroying one-third of the blood samples at the laboratory, and (b) pursuant to the Board's policy of destroying split samples after 45 days if no request for testing has been made.

[11] In the absence of any evidence of bad faith, such as bias against Plaintiff, or of a harassing motive, no exception to the application of *Younger* abstention is warranted.

(b) *There are no extraordinary circumstances.*

Plaintiff's claim of "extraordinary circumstances" is rooted only in the claimed constitutional violation. As discussed earlier, the constitutional dimension of the error claimed does not, by itself, constitute an exception to the application of *Younger* abstention. "Extraordinary circumstances" have not been cataloged fully, but Plaintiff's case does not approach the example referred to in *Younger*. *See Aiona v. Judiciary of Haw.*, 17 F.3d 1244, 1248-49 (9th Cir. 1994) ("For example, if a statute 'flagrantly and patently' violates 'express constitutional prohibitions in every clause, sentence and paragraph,' then federal intervention in state court proceedings is appropriate." (quoting *Younger*, 401 U.S. at 53)).

B. *Attorney fees*

Fees were awarded on the ground that Plaintiff was the "prevailing party." 42 U.S.C. § 1988. For the reasons that we have explained, however, Plaintiff was not entitled to prevail below. Thus, the fee award must be reversed.

REVERSED and REMANDED with instructions to vacate the award of attorney fees to Plaintiff and to dismiss the action.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BOB BAFFERT, Plaintiff-Appellee, v. CALIFORNIA HORSERACING BOARD et al., Defendants-Appellants.	Nos. 02-55858 02-56135 D.C. No. CV-01-07363-DT ORDER (Filed July 16, 2003)

Before: SCHROEDER, Chief Judge, GRABER, Circuit Judge, and SINGLETON,* District Judge

The panel has voted to deny the petition for rehearing. Chief Judge Schroeder and Judge Graber have voted to deny the petition for rehearing en banc, and Judge Singleton has so recommended.

The full court has been advised of the petition for rehearing en banc and no judge of the court has requested a vote on it.

The petition for rehearing and petition for rehearing en banc are DENIED.

* The Honorable James K. Singleton, United States District Judge for the District of Alaska, sitting by designation.

APPENDIX C

CONSTITUTION OF THE UNITED STATES OF AMERICA

AMENDMENT 14

Sec. 1. [Citizens of the United States.]

All persons born or naturalized in the United States, and subject to the jurisdiction thereto, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Sec. 5. [Power to enforce amendment.]

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

APPENDIX D

UNITED STATES CODE

TITLE 42. The Public Health and Welfare

CHAPTER 21. CIVIL RIGHTS

42 USCS § 1983

§ 1983. Civil action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

UNITED STATES CODE

TITLE 42. The Public Health and Welfare

CHAPTER 21. CIVIL RIGHTS

42 USCS § 1988

§ 1988. Proceedings in vindication of civil rights.

(b) Attorney's fees. In any action or proceeding to enforce a provision of sections 1977, 1977A, 1978, 1979, 1980, and 1981 of the Revised Statutes [42 USCS §§ 1981-1983, 1985, 1986], title IX of Public Law 92-318 [20 USCS §§ 1681 et seq.], the Religious Freedom Restoration Act of 1993, the Religious Land Use and Institutionalized Persons Act of 2000, title VI of the Civil Rights Act of 1964 [42 USCS §§ 2000d et seq.], or section 40302 of the Violence Against Women Act of 1994, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.

APPENDIX E

CALIFORNIA CODES

BUSINESS & PROFESSIONS CODE

Division 8. Special Business Regulations

CHAPTER 4. HORSE RACING

Article 8.5. Equine Medication

B.&P. Code § 19580

§ 19580. Adoption of regulations relating to equine medication; Legislative intent.

(a) The board shall adopt regulations to establish policies, guidelines, and penalties relating to equine medication in order to preserve and enhance the integrity of horse racing in the state. Those policies, guidelines, and penalties shall include, at a minimum, the provisions set forth in this article.

(b) It is the intent of the Legislature that the board, in its testing efforts to determine illegal or excessive use of substances, recognize the greater importance of conducting complete and thorough testing of a lesser number of samples in preferences to conducting less thorough testing on a greater number of samples.

CALIFORNIA CODES

BUSINESS & PROFESSIONS CODE

Division 8. Special Business Regulations

CHAPTER 4. HORSE RACING

Article 2. General Administration and Enforcement

B.&P. Code § 19431

§ 19431. Offices; Meetings; Quorum.

The board shall establish and maintain a general office for the transaction of its business in Sacramento. The board may establish any branch office for the transaction of its business at a place to be determined by it, and may hold meetings at any other place within the state when the interests of the public may be better served.

A public record of every vote shall be maintained at the board's general office.

At least four members of the board shall concur in the taking of any official action or in the exercise of any of the board's duties, powers, or functions.

CALIFORNIA CODES

GOVERNMENT CODE

Title 2. Government of the State of California

Division 3. Executive Department

Part 1. State Departments and Agencies

CHAPTER 5. ADMINISTRATIVE ADJUDICATION: FORMAL HEARING

Government Code § 11517

§ 11517. Contested cases.

(a) A contested case may be originally heard by the agency itself and subdivision (b) shall apply. Alternatively, at the discretion of the agency, an administrative law judge may originally hear the case alone and subdivision (c) shall apply.

(b) If a contested case is originally heard before an agency itself, all of the following provisions apply:

(1) An administrative law judge shall be present during the consideration of the case and, if requested, shall assist and advise the agency in the conduct of the hearing.

(2) No member of the agency who did not hear the evidence shall vote on the decision.

(3) The agency shall issue its decision within 100 days of submission of the case.

(c) (1) If a contested case is originally heard by an administrative law judge alone, he or she shall prepare within 30 days after the case is submitted to him or her a proposed decision in a form that may be adopted by the agency as the final decision in the case. Failure of the administrative law judge to deliver a proposed decision within the time required does not prejudice the rights of the agency in the case. Thirty days after the receipt by the agency of the proposed decision, a copy of the proposed decision shall be filed by the agency as a public record and a copy shall be served by the agency on each party and his or her attorney. The filing and service is not an adoption of a proposed decision by the agency.

(2) Within 100 days of the receipt by the agency of the administrative law judge's proposed decision, the agency may act as prescribed in subparagraphs (A) to (E), inclusive. If the agency fails to act as prescribed in subparagraphs (A) to (E), inclusive, within 100 days of receipt of the proposed decision, the proposed decision shall be deemed adopted by the agency. The agency may do any of the following:

(A) Adopt the proposed decision in its entirety.

(B) Reduce or otherwise mitigate the proposed penalty and adopt the balance of the proposed decision.

(C) Make technical or other minor changes in the proposed decision and adopt it as the decision. Action by the agency under this paragraph is limited to a clarifying change or a change of a similar nature that does not affect the factual or legal basis of the proposed decision.

(D) Reject the proposed decision and refer the case to the same administrative law judge if reasonably available, otherwise to another administrative law judge, to take additional evidence. If the case is referred to an administrative law judge pursuant to this subparagraph, he or she shall prepare a revised proposed decision, as provided in paragraph (1), based upon the additional evidence and the transcript and other papers that are part of the record of the prior hearing. A copy of the revised proposed decision shall be furnished to each party and his or her attorney as prescribed in this subdivision.

(E) Reject the proposed decision, and decide the case upon the record, including the transcript, or upon an agreed statement of the parties, with or without taking additional evidence. By stipulation of the parties, the agency may decide the case upon the record without including the transcript. If the agency acts pursuant to this subparagraph, all of the following provisions apply:

(i) A copy of the record shall be made available to the parties. The agency may require payment of fees covering direct costs of making the copy.

(ii) The agency itself shall not decide any case provided for in this subdivision without affording the parties the opportunity to present either oral or written argument before the agency itself. If additional oral evidence is introduced before the agency itself, no agency member may vote unless the member heard the additional oral evidence.

(iii) The authority of the agency itself to decide the case under this subdivision includes authority to decide some but not all issues in this case.

(iv) If the agency elects to proceed under this subparagraph, the agency shall issue its final decision not later than 100 days after rejection of the proposed decision. If the agency elects to proceed under this subparagraph, and has ordered a transcript of the proceedings before the administrative law judge, the agency shall issue its final decision not later than 100 days after receipt of the transcript. If the agency finds that a further delay is required by special circumstance, it shall issue an order delaying the decision for no more than 30 days and specifying the reasons therefor. The order shall be subject to judicial review pursuant to Section 11523.

(d) The decision of the agency shall be filed immediately by the agency as a public record and a copy shall be served by the agency on each party and his or her attorney.

CALIFORNIA CODES

PUBLIC CONTRACT CODE

Division 2. General Provisions

Part 2. Contracting by State Agencies

Chapter 2. State Acquisition of Goods and Services

ARTICLE 4. CONTRACTS FOR SERVICES

Public Contract Code § 10335

§ 10335. Applicability of article.

(a) This article shall apply to all contracts, including amendments, entered into by any state agency for services to be rendered to the state, whether or not the services involve the furnishing or use of equipment, materials, or supplies or are performed by an independent contractor. Except as provided in Section 10351, all contracts subject to this article are of no effect unless and until approved by the department. Each contract shall be transmitted with all papers, estimates, and recommendations concerning it to the department and, if approved by the department, shall be effective from the date of approval.

(d) Contracts subject to the approval of the department shall also have the department's approval for a modification or amendment thereto, with the following exceptions:

(1) An amendment to a contract that only extends the original time for completion of performance for a period of one year or less is exempt. If the original contract was subject to approval by the department, one fully executed copy including transmittal document, explaining the reason for the extension, shall be sent to the legal office of the department. A contract may only be amended once under this exemption.

(2) Contracts let or awarded on the basis of a law requiring competitive bidding may be modified or amended only if the contract so provides or if authorized by the law requiring competitive bidding.

(3) If an amendment to a contract has the effect of giving the contract as amended an increase in monetary amount, or an agreement by the state to indemnify or save harmless any person, the amendment shall be approved by the department.

APPENDIX F

CALIFORNIA CODE OF REGULATIONS

Title 4. Business Regulations

Division 4. California Horse Racing Board

ARTICLE 15. VETERINARY PRACTICES

4 C.C.R. 1843

§ 1843. Medication, Drugs and other Substances.

It shall be the intent of these rules to protect the integrity of horse racing, to guard the health of the horse, and to safeguard the interests of the public and the racing participants through the prohibition or control of all drugs, medications and drug substances foreign to the horse. In this context:

(a) No horse participating in a race shall carry in its body any drug substance or its metabolites or analogues, foreign to the horse except as hereinafter expressly provided.

(b) No drug substance shall be administered to a horse which is entered to compete in a race to be run in this State except for approved and authorized drug substances as provided in these rules.

(c) No person other than a licensed veterinarian or animal health technician shall have in his/her possession any drug substance which can be administered to a horse, except such drug substance prescribed by a licensed veterinarian for a specific existing condition of a horse and which is properly labelled.

(d) A finding by an official chemist that a test sample taken from a horse contains a drug substance or its metabolites or analogues which has not been approved by the Board, or a finding of more than one approved non-steroidal, anti-inflammatory drug substance, or a finding of a drug substance in excess of the limit established by the Board for its use shall be prima facie evidence that the trainer and his/her agents responsible for the care of the horse has/have been negligent in the care of the horse and is prima facie evidence that the drug substance has been administered to the horse.

CALIFORNIA CODE OF REGULATIONS

Title 4. Business Regulations

Division 4. California Horse Racing Board

ARTICLE 15. VETERINARY PRACTICES

4 C.C.R. 1843.1

§ 1843.1. Prohibited Drug Substances.

For purposes of this division, prohibited drug substance means:

(a) any drug, substance, medication or chemical foreign to the horse, whether natural or synthetic, or a metabolite or analog thereof, whose use is not expressly authorized in this article.

(b) any drug, substance, medication or chemical authorized by this article in excess of the authorized level or other restrictions as set forth in this article.

CALIFORNIA CODE OF REGULATIONS

Title 4. Business Regulations

Division 4. California Horse Racing Board

ARTICLE 15. VETERINARY PRACTICES

4 C.C.R. 1858

§ 1858. Test Sample Required.

Blood and urine test samples shall be taken daily from the winner of every race, from horses finishing second and third in any stakes race with a gross purse of $75,000 or more, and from not less than six or more than nine other horses designated for testing by the stewards or the official veterinarian. Every horse within the inclosure or entered in any race is subject to testing and no owner, trainer or other person having the care of a horse shall refuse to submit it for testing when directed by the stewards or the official veterinarian.

CALIFORNIA CODE OF REGULATIONS

Title 4. Business Regulations

Division 4. California Horse Racing Board

ARTICLE 15. VETERINARY PRACTICES

4 C.C.R. 1859

§ 1859. Taking, Testing and Reporting of Samples.

(a) Urine, blood or other official test samples shall be taken under the direction of the official veterinarian or their designee. All samples shall be taken in a detention area approved by the Board, unless the official veterinarian approves otherwise. The taking of any test sample shall be witnessed, confirmed or acknowledged by the trainer of the horse being tested or their agent or employee, and may be witnessed by the owner, trainer or other person designated by them. All official test samples shall be sent to the official laboratory approved and designated by the Board, in such manner as the Board may direct. All required samples shall be in the custody of the official veterinarian, their assistants or other persons approved by them, from the time they are taken until they are delivered to the custody of the official laboratory.

(b) If the official laboratory fails to detect in the official test samples, a prohibited drug substance, as defined in this article, the official sample shall be discarded immediately.

(c) The Executive Director and the Equine Medical Director shall immediately be notified by the official laboratory of each finding that an official test sample contains a prohibited drug substance, as defined in this article. The official laboratory shall further provide all information and data on which the finding is based to the Equine Medical Director, and shall transmit its official report of the finding to the Executive Director, within five (5) working days after the initial notification is made.

(d) The Board has the authority to direct the official laboratory to retain and preserve by freezing samples for future analysis.

(e) The fact that purse money has been distributed prior to the issuance of a laboratory report shall not be deemed a finding that no drug substance prohibited by this article has been administered, in violation of these rules, to the horse earning such purse money.

CALIFORNIA CODE OF REGULATIONS

Title 4. Business Regulations

Division 4. California Horse Racing Board

ARTICLE 15. VETERINARY PRACTICES

4 C.C.R. 1859.25

§ 1859.25. Split Sample Testing.

(a) In addition to the blood and urine official test samples transmitted to the official laboratory for testing as provided in Rule 1859 of this Article, the Board shall maintain a portion of the official test sample for each horse tested if sufficient sample is available after the official test samples are taken. That portion shall be designated the split sample. The Board makes no guarantee as to the amount of sample which will be available for the split sample. All samples taken by representatives of the Board are under the jurisdiction of and shall remain the property of the Board at all times. The Board shall ensure the security and storage of the split sample.

(b) When the Executive Director or the Executive Director's designee is notified of a finding by the official laboratory that a test sample from a horse participating in any race contained a prohibited drug substance as defined in this Article, the Executive Director, after consulting with the Equine Medical Director or the Equine Medical Director's designee as to the presence of the prohibited drug substance shall notify a Supervising Investigator. The owner and the trainer shall be confidentially notified of the finding by a Supervising Investigator or his/her designee and the owner and

trainer shall each have 72 hours from the date he or she is notified to request that the split sample of the official test sample that was found to contain the prohibited drug substance(s) be tested by an independent Board approved laboratory.

(c) If the owner or trainer wishes to have the split sample tested, he or she shall comply with the following procedures:

(1) The request shall be made on CHRB-56, (Rev. 5/97), Request to Release Evidence, which is hereby incorporated by reference. CHRB-56 shall be made available at all CHRB offices.

(2) The owner or trainer requesting to have the split sample tested shall be responsible for all charges and costs incurred in transporting and testing the split sample. By signing CHRB-56, the owner or trainer certifies he or she has made arrangements for payment to the designated Board-approved laboratory for laboratory testing services.

(3) Verification of payment for costs incurred in transporting and testing the split sample must be received by the CHRB within five (5) working days from the CHRB receipt of CHRB-56. If such verification of payment is not received, the split sample, will not be released or shipped to the Board-approved laboratory designated by the owner or trainer to test the split sample and the owner and trainer will have relinquished his/her right to have the split sample tested. If a complaint issues, the only test results that will be considered will be the results from the Board's official laboratory.

(d) Upon approval by the Executive Director or the Executive Director's designated representative of a valid request on CHRB-56, CHRB-29 (Rev. 5/97), Authorization to Release Split Sample Urine Evidence, or CHRB-29A (Rev. 5/97), Authorization to Release Split Sample Blood Evidence, which are hereby incorporated by reference, shall be completed and the Board shall ensure that the split sample is sent to the designated laboratory for testing.

(1) If the findings by the independent Board-approved laboratory fail to confirm the findings of the prohibited drug substance as reported by the official laboratory, it shall be presumed that the prohibited drug substance was not present in the official sample.

(2) If the findings by the independent Board-approved laboratory confirm the findings of the prohibited drug substance as reported by the official laboratory, the Executive Director shall report these findings to the Board within 24 hours after receiving confirmation of the prohibited drug substance in the split sample.

(e) If the owner or trainer fails to request the testing of the split sample in accordance with the procedures specified in this rule, they shall be deemed to have waived their rights to have the split sample tested.

(f) Results of the official test sample and the split sample shall be, and shall remain, confidential and shall be provided only to the Executive Director or the Executive Director's designee, the Board, the Equine Medical Director or the Equine Medical Director's designee, and to the owner and trainer, unless or until the Board files an official complaint or accusation.

CALIFORNIA CODE OF REGULATIONS

Title 4. Business Regulations

Division 4. California Horse Racing Board

ARTICLE 16. GENERAL CONDUCT

4 C.C.R. 1887

§ 1887. Trainer to Insure Condition of Horse.

(a) The trainer is the absolute insurer of and responsible for the condition of the horses entered in a race, regardless of the acts of third parties, except as otherwise provided in this article. If the chemical or other analysis of urine or blood test samples or other tests prove positive showing the presence of any prohibited drug substance defined in Rule 1843.1 of this division, the trainer of the horse may be fined, his/her license suspended or revoked, or be ruled off. In addition, the owner of the horse, foreman in charge of the horse, groom, and any other person shown to have had the care or attendance of the horse, may be fined, his/her license suspended, revoked, or be ruled off.

(b) Notwithstanding the above, if the Board or its agents fail to notify a trainer of a potential positive test within 18 calendar days from the date the sample was taken, the trainer shall not be deemed responsible under this section unless it is shown by the preponderance of the evidence that the trainer administered the drug or other prohibited substance defined in Rule 1843.1 of this division, caused the administration or had knowledge of the administration.

CALIFORNIA CODE OF REGULATIONS

Title 4. Business Regulations

Division 4. California Horse Racing Board

ARTICLE 16. GENERAL CONDUCT

4 C.C.R. 1888

§ 1888. Defense to Trainer Insurer Rule.

A trainer or other person charged with a violation of Rule 1887 of this division may defend, mitigate or appeal the charge if:

(a) He was not, before the commencement of any proceeding against him, informed of the charges being brought against him;

(b) He was not permitted counsel, representation or an advisor of his choosing in any hearing before the stewards concerning the charges;

(c) He shows, by a preponderance of evidence, that he made every reasonable effort to protect the horses in his care from tampering by unauthorized persons; and

(d) He was not permitted to introduce evidence in his own behalf before any finding or ruling was made against him. Nothing herein shall require that the stewards permit cross-examination of any witness appearing before them, or issue subpoenas for the attendance of witnesses.

APPENDIX G

STATE OF CALIFORNIA

California Horse Racing Board

HORSEMEN'S HANDBOOK
CONCERNING
MEDICATION RULES AND REGULATIONS

DEFENSE TO TRAINER INSURER RULE: MITIGATING CIRCUMSTANCES

A trainer or other person who is charged with a violation of Rule 1887, Trainer to Insure Condition of Horse, may, in the course of the hearing, present mitigating circumstances in defense to the trainer insurer rule. The burden of producing evidence of mitigating circumstances is upon the accused licensee, and while not all encompassing, the following are examples of situations which may constitute mitigating circumstances:

(a) Evidence of accidental or environmental contamination of feed and other substances, unless it is shown that the accidental or environmental contamination:

(1) could have been prevented had reasonable precautions been taken; and

(2) the accused licensee would be the person expected to take such reasonable precautions; and

(3) the accused licensee failed to take such reasonable precautions.

(b) Evidence of third party tampering. Mitigating circumstances may be found to exist where a preponderance of the evidence presented at the hearing establishes to the satisfaction of the stewards that the presence of the drug substance detected was the result of third party intervention or tampering with the horse which the accused licensee could not reasonably have been expected to prevent, as described in Rule 1888(c).

(c) Changes in Testing Procedures. Changes in the levels specified for the authorized drug substances in 1844(e), as a result of changes in testing methodologies, will be publicly noticed prior to adoption.

(d) Residue Levels of Therapeutic Medication. If administered under the direction or prescription of a licensed veterinarian, levels of those therapeutic substances, specifically authorized in Rule 1844, and not exceeding the levels designated in urine test samples, shall be considered as authorized medication. Levels found in excess of those prescribed in Rule 1844 shall be considered violations of that rule.